

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL ACTION NO. 5:08-CR-00027-KDB-DCK-4**

UNITED STATES OF AMERICA,

v.

OSCAR HERNANDEZ,

Defendant.

ORDER

THIS MATTER is before the Court on Defendant's *pro se* motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) and the First Step Act of 2018. (Doc. No. 331). Defendant seeks compassionate release arguing he faces a heightened risk of contracting COVID-19 while incarcerated at FCI Allenwood - Medium¹ and that, due to his pre-existing medical conditions, he faces a heightened risk of a severe case of COVID-19 if he were to contract the virus. Having carefully reviewed the Defendant's motion, exhibits, and all other relevant portions of the record, the Court will deny his motion as Defendant has not met his burden to establish that a sentencing reduction is warranted under 18 U.S.C. § 3582(c).

The Bureau of Prison medical records submitted by the Defendant do not show any serious medical ailments and he is taking medication for his hypertension and esophageal reflux. (Doc. No. 332). Additionally, the Defendant is fully vaccinated against COVID-19 as he received the second dose of the Moderna vaccine on June 2, 2021. *Id.* at 7. The CDC reports that vaccinations

¹ According to the Bureau of Prison's (BOP) website, FCI Allenwood - Medium currently has zero inmates and one staff with confirmed active cases of COVID-19. There have been no inmate deaths nor staff deaths, while 483 inmates have recovered and 50 staff have recovered. Additionally, at the FCI Allenwood complex, 427 staff have been fully inoculated and 1,677 inmates have been fully inoculated

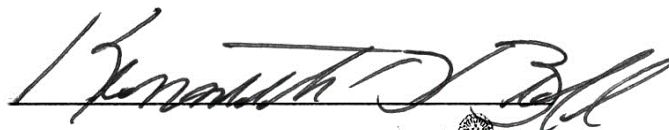
protect individuals from getting sick with COVID-19, *Facts about Vaccination*, CDC (Apr. 15, 2021), www.cdc.gov/coronavirus/2019-ncov/vaccines/facts.html, and may prevent individuals from “getting seriously ill” even if they do contract the virus, *Benefits of Getting Vaccinated*, CDC (Apr. 12, 2021), www.cdc.gov/coronavirus/2019-ncov/vaccines/vaccine-benefits.html. The CDC also notes that vaccines currently available in the United States have been shown to be “highly effective” at preventing COVID-19.

The vaccine addresses Defendant’s concerns about contracting COVID-19 and his purported risk of severe illness should he contract the virus. Because Defendant’s vaccination significantly mitigates the risk of contracting COVID-19, Defendant cannot establish an “extraordinary and compelling” reason for compassionate release based on his concerns about contracting the virus. As such, Defendant’s motion will be denied.

IT IS THEREFORE ORDERED that Defendant’s *pro se* motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A), (Doc. No. 331), is **DENIED**.

SO ORDERED.

Signed: September 9, 2021



Kenneth D. Bell
United States District Judge

